the constraints of budget limitations and the security and orderly running of the institution and the Bureau through a religious diet menu. The inmate will provide a written statement articulating the religious motivation for participation in the religious diet program.

(b) An inmate who has been approved for a religious diet menu must notify the chaplain in writing if the inmate wishes to withdraw from the religious diet. Approval for an inmate's religious diet may be withdrawn by the chaplain if the inmate is documented as being in violation of the terms of the religious diet program to which the inmate has agreed in writing. In order to preserve the integrity and orderly operation of the religious diet program and to prevent fraud, inmates who withdraw (or are removed) may not be immediately reestablished back into the program. The process of reapproving a religious diet for an inmate who voluntarily withdraws or who is removed ordinarily may extend up to thirty days. Repeated withdrawals (voluntary or otherwise), however, may result in inmates being subjected to a waiting period of up to one year.

(c) The chaplain may arrange for inmate religious groups to have one appropriate ceremonial or commemorative meal each year for their members as identified by the religious preference reflected in the inmate's file. An inmate may attend one religious ceremonial meal in a calendar year.

[60 FR 46486, Sept. 6, 1995, as amended at 62 FR 44836, Aug. 22, 1997; 68 FR 74860, Dec. 29, 2003]

PART 549—MEDICAL SERVICES

Subpart A—Infectious Disease Management

Sec.

Subpart B—Over-The-Counter (OTC) Medications

Subpart C—Administrative Safeguards for Psychiatric Treatment and Medication

Subpart D—Plastic Surgery

Subpart E—Hunger Strikes, Inmate

Subpart F—Fees for Health Care Services

Subpart G—Authority To Conduct Autopsies

AUTHORITY: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4014, 4042, 4045, 4081, 4082, (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Subpart A—Infectious Disease Management

SOURCE: 70 FR 29193, May 20, 2005, unless otherwise noted.

§ 549.10 Purpose and scope.

The Bureau will manage infectious diseases in the confined environment of a correctional setting through a comprehensive approach which includes

testing, appropriate treatment, prevention, education, and infection control measures.

§ 549.11 Program responsibility.

Each institution's Health Services Administrator (HSA) and Clinical Director (CD) are responsible for the operation of the institution's infectious disease program in accordance with applicable laws and regulations.

§ 549.12 Testing.

(a) *Human Immunodeficiency Virus (HIV)*—(1) *Clinically indicated.* The Bureau tests inmates who have sentences of six months or more if health services staff determine, taking into consideration the risk as defined by the Centers for Disease Control guidelines, that the inmate is at risk for HIV infection. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(2) *Exposure incidents.* The Bureau tests an inmate, regardless of the length of sentence or pretrial status, when there is a well-founded reason to believe that the inmate may have transmitted the HIV infection, whether intentionally or unintentionally, to Bureau employees or other non-inmates who are lawfully present in a Bureau institution. Exposure incident testing does not require the inmate's consent.

(3) *Surveillance Testing.* The Bureau conducts HIV testing for surveillance purposes as needed. If the inmate refuses testing, staff may initiate an incident report for refusing to obey an order.

(4) *Inmate request.* An inmate may request to be tested. The Bureau limits such testing to no more than one per 12-month period unless the Bureau determines that additional testing is warranted.

(5) *Counseling.* Inmates being tested for HIV will receive pre- and post-test counseling, regardless of the test results.

(b) *Tuberculosis (TB).* (1) The Bureau screens each inmate for TB within two calendar days of initial incarceration.

(2) The Bureau conducts screening for each inmate annually as medically indicated.

(3) The Bureau will screen an inmate for TB when health services staff determine that the inmate may be at risk for infection.

(4) An inmate who refuses TB screening may be subject to an incident report for refusing to obey an order. If an inmate refuses skin testing, and there is no contraindication to tuberculin skin testing, then, institution medical staff will test the inmate involuntarily.

(5) The Bureau conducts TB contact investigations following any incident in which inmates or staff may have been exposed to tuberculosis. Inmates will be tested according to paragraph (b)(4) of this section.

(c) *Diagnostics.* The Bureau tests an inmate for an infectious or communicable disease when the test is necessary to verify transmission following exposure to bloodborne pathogens or to infectious body fluid. An inmate who refuses diagnostic testing is subject to an incident report for refusing to obey an order.

§ 549.13 Programming, duty, and housing restrictions.

(a) The CD will assess any inmate with an infectious disease for appropriateness for programming, duty, and housing. Inmates with infectious diseases that are transmitted through casual contact will be prohibited from work assignments in any area, until fully evaluated by a health care provider.

(b) Inmates may be limited in programming, duty, and housing when their infectious disease is transmitted through casual contact. The Warden, in consultation with the CD, may exclude inmates, on a case-by-case basis, from work assignments based upon the security and good order of the institution.

(c) If an inmate tests positive for an infectious disease, that test alone does not constitute sole grounds for disciplinary action. Disciplinary action may be considered when coupled with a secondary action that could lead to transmission of an infectious agent. Inmates testing positive for infectious disease are subject to the same disciplinary policy that applies to all inmates (*see* 28 CFR part 541, subpart B). Except as provided for in our disciplinary policy,

no special or separate housing units may be established for HIV-positive inmates.

§ 549.14 Confidentiality of information.

Any disclosure of test results or medical information is made in accordance with:

(a) The Privacy Act of 1974, under which the Bureau publishes routine uses of such information in the Department of Justice Privacy Act System of Records Notice entitled ''Inmate Physical and Mental Health Record System, JUSTICE/BOP–007''; and

(b) The Correction Officers Health and Safety Act of 1998 (codified at 18 U.S.C. 4014), which provides that test results must be communicated to a person requesting the test, the person tested, and, if the results of the test indicate the presence of HIV, to correctional facility personnel consistent with Bureau policy.

§ 549.15 Infectious disease training and preventive measures.

(a) The HSA will ensure that a qualified health care professional provides training, incorporating a question-and-answer session, about infectious diseases to all newly committed inmates, during Admission and Orientation.

(b) Inmates in work assignments which staff determine to present the potential for occupational exposure to blood or infectious body fluids will receive annual training on prevention of work-related exposures and will be offered vaccination for Hepatitis B.

Subpart B—Over-The-Counter (OTC) Medications

SOURCE: 68 FR 47849, Aug. 12, 2003, unless otherwise noted.

§ 549.30 Purpose and scope.

This subpart establishes procedures governing inmate access to Over-The-Counter (OTC) medications for all inmates except those in inpatient status at Federal Medical Centers. Inmates may buy OTC medications which are available at the commissary. Inmates may also obtain OTC medications at sick call if the inmate does not already have the OTC medication and:

(a) Health services staff determine that the inmate has an immediate medical need which must be addressed before his or her regularly scheduled commissary visit; or

(b) The inmate is without funds.

§ 549.31 Inmates without funds.

(a) The Warden must establish procedures to provide up to two OTC medications per week for an inmate without funds. An inmate without funds is an inmate who has not had a trust fund account balance of $6.00 for the past 30 days.

(b) An inmate without funds may obtain additional OTC medications at sick call if health services staff determine that he/she has an immediate medical need which must be addressed before the inmate may again apply for OTC medications under this section.

(c) To prevent abuses of this section (*e.g.*, inmate shows a pattern of depleting his or her commissary funds before requesting OTC medications), the Warden may impose restrictions on the provisions of this section.

[68 FR 47849, Aug. 12, 2003, as amended at 69 FR 53805, Sept. 3, 2004]

Subpart C—Administrative Safeguards for Psychiatric Treatment and Medication

SOURCE: 57 FR 53820, Nov. 12, 1992, unless otherwise noted.

§ 549.40 Use of psychotropic medications.

Psychotropic medication is to be used only for a diagnosable psychiatric disorder or symptomatic behavior for which such medication is accepted treatment.

§ 549.41 Voluntary admission and psychotropic medication.

(a) A sentenced inmate may be voluntarily admitted for psychiatric treatment and medication when, in the professional judgment of qualified health personnel, such inmate would benefit from such treatment and demonstrates the ability to give informed consent to such admission. The assessment of the

inmate's ability to give informed consent will be documented in the individual's medical record by qualified health personnel.

(b) If an inmate is to receive psychotropic medications voluntarily, his or her informed consent must be obtained, and his or her ability to give such consent must be documented in the medical record by qualified health personnel.

[57 FR 53820, Nov. 12, 1992, as amended at 60 FR 49444, Sept. 25, 1995]

§ 549.42 Involuntary admission.

A court determination is necessary for involuntary hospitalization for psychiatric treatment. A sentenced inmate, not currently committed for psychiatric treatment, who is not able or willing to voluntarily consent either to psychiatric admission or to medication, is subject to judicial involuntary commitment procedures. Even after an inmate is involuntarily committed, staff shall follow the administrative due process procedures specified in § 549.43 of this subpart.

§ 549.43 Involuntary psychiatric treatment and medication.

Title 18 U.S.C. 4241–4247 and federal court decisions require that certain procedures be followed prior to the involuntary administration of psychiatric treatment and medication to persons in the custody of the Attorney General. Court commitment for hospitalization provides the judicial due process hearing, and no further judicial authorization is needed for the admission decision. However, in order to administer treatment or psychotropic medication on an involuntary basis, further administrative due process procedures, as specified in this section, must be provided to the inmate. Except as provided for in paragraph (b) of this section, the procedures outlined herein must be followed after a person is committed for hospitalization and prior to administering involuntary treatment, including medication.

(a) *Procedures.* When an inmate will not or cannot provide voluntary written informed consent for psychotropic medication, the inmate will be scheduled for an administrative hearing. Absent an emergency situation, the inmate will not be medicated prior to the hearing. In regard to the hearing, the inmate will be given the following procedural safeguards:

(1) Staff shall provide 24-hour advance written notice of the date, time, place, and purpose of the hearing, including the reasons for the medication proposal.

(2) Staff shall inform the inmate of the right to appear at the hearing, to present evidence, to have a staff representative, to request witnesses, and to request that witnesses be questioned by the staff representative or by the person conducting the hearing. If the inmate does not request a staff representative, or requests a staff representative with insufficient experience or education, the institution mental health division administrator shall appoint a staff representative. Witnesses should be called if they have information relevant to the inmate's mental condition and/or need for medication, and if they are reasonably available. Witnesses who only have repetitive information need not be called.

(3) The hearing is to be conducted by a psychiatrist who is not currently involved in the diagnosis or treatment of the inmate.

(4) The treating/evaluating psychiatrist/clinician must be present at the hearing and must present clinical data and background information relative to the need for medication. Members of the treating/evaluating team may also attend the hearing.

(5) The psychiatrist conducting the hearing shall determine whether treatment or psychotropic medication is necessary in order to attempt to make the inmate competent for trial or is necessary because the inmate is dangerous to self or others, is gravely disabled, or is unable to function in the open population of a mental health referral center or a regular prison. The psychiatrist shall prepare a written report regarding the decision.

(6) The inmate shall be given a copy of the report and shall be advised that he or she may submit an appeal to the institution mental health division administrator regarding the decision within 24 hours of the decision and that

the administrator shall review the decision within 24 hours of the inmate's appeal. The administrator shall ensure that the inmate received all necessary procedural protections and that the justification for involuntary treatment or medication is appropriate. Upon request of the inmate, the staff representative shall assist the inmate in preparing and submitting the appeal.

(7) If the inmate appeals, absent a psychiatric emergency, medication will not be administered before the administrator's decision. The inmate's appeal, which may be handwritten, must be filed within 24 hours of the inmate's receipt of the decision.

(8) A psychiatrist, other than the attending psychiatrist, shall provide follow-up monitoring of the patient's treatment or medication at least once every 30 days after the hearing. The follow-up shall be documented in the medical record.

(b) *Emergencies.* For purpose of this subpart, a psychiatric emergency is defined as one in which a person is suffering from a mental illness which creates an immediate threat of bodily harm to self or others, serious destruction of property, or extreme deterioration of functioning secondary to psychiatric illness. During a psychiatric emergency, psychotropic medication may be administered when the medication constitutes an appropriate treatment for the mental illness and less restrictive alternatives (e.g., seclusion or physical restraint) are not available or indicated, or would not be effective.

(c) *Exceptions.* Title 18 United States Code, sections 4241 through 4247 do not apply to military prisoners, unsentenced Immigration and Naturalization Service (INS) detainees, unsentenced prisoners in Bureau custody as a result of a court order (e.g. a civil contemnor), state or territorial prisoners, and District of Columbia Code offenders. For those persons not covered by sections 4241–4247, the decision to involuntarily admit the person to the hospital must be made at an administrative hearing meeting the requirements of *Vitek* v. *Jones.* The decision to provide involuntary treatment, including medication, shall nonetheless be made at an administrative hearing in compliance with § 549.43.

[57 FR 53820, Nov. 12, 1992, as amended at 60 FR 49444, Sept. 25, 1995]

Subpart D—Plastic Surgery

SOURCE: 61 FR 13322, Mar. 26, 1996, unless otherwise noted.

§ 549.50 Purpose and scope.

The Bureau of Prisons does not ordinarily perform plastic surgery on inmates to correct preexisting disfigurements (including tattoos) on any part of the body. In circumstances where plastic surgery is a component of a presently medically necessary standard of treatment (for example, part of the treatment for facial lacerations or for mastectomies due to cancer) or it is necessary for the good order and security of the institution, the necessary surgery may be performed.

§ 549.51 Approval procedures.

The Clinical Director shall consider individually any request from an inmate or a BOP medical consultant.

(a) In circumstances where plastic surgery is a component of the presently medically necessary standard of treatment, the Clinical Director shall forward the surgery request to the Office of Medical Designations and Transportation for approval.

(b) If the Clinical Director recommends plastic surgery for the good order and security of the institution, the request for plastic surgery authorization will be forwarded to the Warden for initial approval. The Warden will forward the request through the Regional Director to the Medical Director. The Medical Director shall have the final authority to approve or deny this type of plastic surgery request.

(c) If the Clinical Director is unable to determine whether the plastic surgery qualifies as a component of presently medically necessary standard of treatment, the Clinical Director may forward the request to the Medical Director for a final determination in accordance with the provisions of paragraph (b) of this section.

§ 549.52 Informed consent.

Approved plastic surgery procedures may not be performed without the informed consent of the inmate involved.

Subpart E—Hunger Strikes, Inmate

SOURCE: 45 FR 23365, Apr. 4, 1980, unless otherwise noted.

§ 549.60 Purpose and scope.

The Bureau of Prisons provides guidelines for the medical and administrative management of inmates who engage in hunger strikes. It is the responsibility of the Bureau of Prisons to monitor the health and welfare of individual inmates, and to ensure that procedures are pursued to preserve life.

[45 FR 23365, Apr. 4, 1980, as amended at 59 FR 31883, June 20, 1994]

§ 549.61 Definition.

As defined in this rule, an inmate is on a *hunger strike:*

(a) When he or she communicates that fact to staff and is observed by staff to be refraining from eating for a period of time, ordinarily in excess of 72 hours; or

(b) When staff observe the inmate to be refraining from eating for a period in excess of 72 hours. When staff consider it prudent to do so, a referral for medical evaluation may be made without waiting 72 hours.

§ 549.62 Initial referral.

(a) Staff shall refer an inmate who is observed to be on a hunger strike to medical or mental health staff for evaluation and, when appropriate, for treatment.

(b) Medical staff ordinarily shall place the inmate in a medically appropriate locked room for close monitoring.

[59 FR 31883, June 20, 1994]

§ 549.63 Initial medical evaluation and management.

(a) Medical staff shall ordinarily perform the following procedures upon initial referral of an inmate on a hunger strike:

(1) Measure and record height and weight;

(2) Take and record vital signs;

(3) Urinalysis;

(4) Psychological and/or psychiatric evaluation;

(5) General medical evaluation;

(6) Radiographs as clinically indicated;

(7) Laboratory studies as clinically indicated.

(b) Medical staff shall take and record weight and vital signs at least once every 24 hours while the inmate is on a hunger strike. Other procedures identified in paragraph (a) of this section shall be repeated as medically indicated.

(c) When valid medical reasons exist, the physician may modify, discontinue, or expand any of the medical procedures described in paragraphs (a) and (b) of this section.

(d) When medical staff consider it medically mandatory, an inmate on a hunger strike will be transferred to a Medical Referral Center or to another Bureau institution considered medically appropriate, or to a community hospital.

[45 FR 23365, Apr. 4, 1980, as amended at 59 FR 31883, June 20, 1994]

§ 549.64 Food/liquid intake/output.

(a) Staff shall prepare and deliver to the inmate's room three meals per day or as otherwise authorized by the physician.

(b) Staff shall provide the inmate an adequate supply of drinking water. Other beverages shall also be offered.

(c) Staff shall remove any commissary food items and private food supplies of the inmate while the inmate is on a hunger strike. An inmate may not make commissary food purchases while under hunger strike management.

[45 FR 23365, Apr. 4, 1980, as amended at 59 FR 31883, June 20, 1994]

§ 549.65 Refusal to accept treatment.

(a) When, as a result of inadequate intake or abnormal output, a physician determines that the inmate's life or health will be threatened if treatment is not initiated immediately, the physician shall give consideration to forced medical treatment of the inmate.

(b) Prior to medical treatment being administered against the inmate's will, staff shall make reasonable efforts to convince the inmate to voluntarily accept treatment. Medical risks faced by the inmate if treatment is not accepted shall also be explained to the inmate. Staff shall document their treatment efforts in the medical record of the inmate.

(c) When, after reasonable efforts, or in an emergency preventing such efforts, a medical necessity for immediate treatment of a life or health threatening situation exists, the physician may order that treatment be administered without the consent of the inmate. Staff shall document their treatment efforts in the medical record of the inmate.

(d) Staff shall continue clinical and laboratory monitoring as necessary until the inmate's life or permanent health is no longer threatened.

(e) Staff shall continue medical, psychiatric and/or psychological follow-up as long as necessary.

[45 FR 23365, Apr. 4, 1980, as amended at 59 FR 31883, June 20, 1994]

§ 549.66 Release from treatment.

Only the physician may order that an inmate be released from hunger strike evaluation and treatment. This order shall be documented in the medical record of the inmate.

[59 FR 31883, June 20, 1994]

Subpart F—Fees for Health Care Services

SOURCE: 70 FR 43050, July 26, 2005, unless otherwise noted.

§ 549.70 Purpose and scope.

(a) The Bureau of Prisons (Bureau) may, under certain circumstances, charge you, an inmate under our care and custody, a fee for providing you with health care services.

(b) Generally, if you are an inmate as described in § 549.71, you must pay a fee for health care services of $2.00 per health care visit if you:

(1) Receive health care services in connection with a health care visit that you requested, (except for services described in § 549.72); or

(2) Are found responsible through the Disciplinary Hearing Process to have injured an inmate who, as a result of the injury, requires a health care visit.

§ 549.71 Inmates affected.

This subpart applies to:

(a) Any individual incarcerated in an institution under the Bureau's jurisdiction; or

(b) Any other individual, as designated by the Director, who has been charged with or convicted of an offense against the United States.

§ 549.72 Services provided without fees.

We will not charge a fee for:

(a) Health care services based on staff referrals;

(b) Staff-approved follow-up treatment for a chronic condition;

(c) Preventive health care services;

(d) Emergency services;

(e) Prenatal care;

(f) Diagnosis or treatment of chronic infectious diseases;

(g) Mental health care; or

(h) Substance abuse treatment.

§ 549.73 Appealing the fee.

You may seek review of issues related to health service fees through the Bureau's Administrative Remedy Program (see 28 CFR part 542).

§ 549.74 Inmates without funds.

You will not be charged a health care service fee if you are considered indigent and unable to pay the health care service fee. The Warden may establish procedures to prevent abuse of this provision.

Subpart G—Authority To Conduct Autopsies

§ 549.80 Authority to conduct autopsies.

(a) The Warden may order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death. The autopsy or tests may be ordered in one of these situations only when the Warden determines that the autopsy or test is necessary to detect a crime,

maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility.

(1) The authority of the Warden under this section may not be delegated below the level of Acting Warden.

(2) Where the Warden has the authority to order an autopsy under this provision, no non-Bureau of Prisons authorization (e.g., from either the coroner or from the inmate's next-of-kin) is required. A decision on whether to order an autopsy is ordinarily made after consultation with the attending physician, and a determination by the Warden that the autopsy is in accordance with the statutory provision. Once it is determined that an autopsy is appropriate, the Warden shall prepare a written statement authorizing this procedure. The written statement is to include the basis for approval.

(b) In any situation other than as described in paragraph (a) of this section, the Warden may order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility with the written consent of a person (e.g., coroner, or next-of-kin, or the decedent's consent in the case of tissue removed for transplanting) authorized to permit the autopsy or post-mortem operation under the law of the State in which the facility is located.

(1) The authority of the Warden under this section may not be delegated below the level of Acting Warden.

(2) When the conducting of an autopsy requires permission of the family or next-of-kin, the following message is to be included in the telegram notifying the family or next-of-kin of the death: ''Permission is requested to perform a complete autopsy''. Also inform the family or next-of-kin that they may telegraph the institution *collect* with their response. Where permission is not received from the person (e.g., coroner or next-of-kin) authorized to permit the autopsy or post-mortem operation, an autopsy or post-mortem operation may not be performed under the conditions of this paragraph (b).

(c) In addition to the provisions of paragraphs (a) and (b) of this section, each institution also is expected to abide by the following procedures.

(1) Staff shall ensure that the state laws regarding the reporting of deaths are followed.

(2) Time is a critical factor in arranging for an autopsy, as this ordinarily must be performed within 48 hours. While a decision on an autopsy is pending, no action should be taken that will affect the validity of the autopsy results. Therefore, while the body may be released to a funeral home, this should be done only with the written understanding from the funeral home that no preparation for burial, including embalming, should be performed until a final decision is made on the need for an autopsy.

(3) Medical staff shall arrange for the approved autopsy to be performed.

(4) To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of state and local laws protecting religious beliefs with respect to such autopsies are to be observed.

[52 FR 48068, Dec. 17, 1987]

PART 550—DRUG PROGRAMS

Subpart A [Reserved]

Subpart B—Alcohol Testing

Sec.

Subpart C [Reserved]

Subpart D—Urine Surveillance

Subpart E—Drug Services (Urine Surveillance and Counseling for Sentenced Inmates in Contract CTCs)